IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Revn. No.1025 of 2006
Date of Decision : February 19, 2007.

Hukam Chand and another ..... Petitioners

Vs.

State of Haryana and another ..... Respondents

Coram : Hon'ble Mr.Justice Mahesh Grover

* * *

Present : Mr.Puneet Bali, Advocate
for the petitioners.

Mr.K.S.Godara, DAG, Haryana.

Mr.V.K.Jindal, Advocate
for respondent no.2.

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MAHESH GROVER, J. (Oral) :

This is a petition impugning the order dated 2.5.2006 vide which the petitioners have been summoned to stand trial pursuant to the provisions of Section 319 of the Cr.P.C.

The case of the prosecution is that Uma Devi, daughter of complainant Ashok Kumar was married to one Anil Kumar on 1.5.2004. Soon after the solemnization of the marriage, Rajesh Kumar, brother of Anil Kumar died in a road accident. After his death, Anil Kumar along with his brother Hukam Chand and sister-in-law Savita started maltreating Uma and raised demand of car on account of dowry. They tried to oust her from her matrimonial home as they were interested in rehabilitating Anita, widow of late Rajesh Kumar. Uma Devi died on 22.10.2004.

The complainant alleged that his daughter Uma has been

strangulated by accused Anil Kumar along with Hukam Chand and Savita who are the present petitioners. The police investigated the matter and found the petitioners innocent and it is contended that their names were mentioned in Column No.II.

Anil Kumar was charge-sheeted under Section 304-B and 498-A of the IPC and in the alternative under Section 302 IPC. He is since facing trial.

During the course of recording of evidence, the prosecution examined Ashok Kumar as PW-1 who reiterated his allegations as made in the FIR and stated that the petitioners had made a plan to oust his daughter Uma Devi from her matrimonial home so that Anita, widow of Rajesh Kumar could be married to Anil Kumar. This became the cause of harassment of Uma Devi and demands of dowry etc. were also made upon Uma Devi.

After recording the statement of the complainant, an application was moved by the complainant for summoning of the petitioners under Section 319 of the Cr.P.C. The trial court, while exercising its jurisdiction under the aforesaid section, has summoned the petitioners to stand trial vide the impugned order dated 2.5.2006.

The aforesaid order has been assailed by the petitioners to contend that the petitioners had been summoned merely on the statement of the complainant with no supporting evidence being there before the trial court. Apart from that, even the application moved by the complainant reveals that the complainant was merely suspicious of the role of the petitioners and could not conclusively fortify his allegations against the petitioners.

On the other hand, learned counsel for the respondent-State contends that the petitioners were clearly involved as Savita Devi was the sister of Anita and was therefore interested in her rehabilitation by ousting Uma Devi from her matrimonial home.

I have heard learned counsel for the parties.

Concededly, the matter was investigated by the police after the FIR had been recorded on the statement of the complainant. The petitioners had been found innocent and were placed in the Column No.II. Thereafter, during the course of proceedings, the statement of the complainant was also recorded, which in fact, was merely a reiteration of what has been stated in the FIR. No other evidence was there before the Court on the basis of which complicity of the petitioners could be established. The Hon'ble Supreme Court in a judgment reported as ***2000(2) RCR (Criminal) 75*** has observed as under :-

> *"11. The basic requirements for invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well as tried along with the already arraigned accused.*
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> *12. But even then, what is conferred on the Court is only a discretion as could be discerned from the words "the Court may proceed against such person". The discretionary power so*

> *conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against each other persons."*

For summoning under Section 319 of the Cr.P.C., there has to be some evidence before the Court which would indicate the complicity of the persons who are sought to be summoned or some material should have come on record which may prompt the court to believe that the persons so accused are likely to be involved, and their conviction is likely to result, in the eventuality of their facing the trial, and the onslaught of the evidence to be adduced by the prosecution. The mere statement, ipso facto, cannot form the basis of summoning the persons under Section 319 of the Cr.P.C.

For the reasons aforesaid, the present petition is allowed and the impugned order dated 2.5.2006 is set aside.

February 19, 2007 **(MAHESH GROVER)**
monika **JUDGE**